"Pausing for a moment to consider the effect of these decisions, I think they all point to this, that for default on a vendor's part there must be a breach of some duty towards the purchaser, though in considering whether the vendor was or was not under the duty alleged the court would be guided by the nature of the contract and all the circumstances of the case. There is no case in which the vendor has been held guilty of a breach of duty and at the same time not guilty of default, although there are cases in which such default has been held not to amount to a wilful default because the vendor was acting under some *bona fide* mistake as to his rights."

In the present case, counsel for the plaintiff took a wrong view of the law that the plaintiff was not bound to complete on 29 April 1987. In my opinion, this amounted to a default as defined by Parker J. in *Re Bayley Worthington & Cohen's Contract.*[1] Consequently the plaintiff was under an obligation to pay late completion interest.

Was the plaintiff's failure to pay late completion interest on 21 August 1987 another default? Although the Singapore Law Society's Conditions of Sale 1981 do not provide for payment of late completion interest as an item of settlement in a completion account, it is in my view a requirement at common law. In *Killner* v. *France*[2] the court held that in an open contract "completion" took place when the purchase money was paid, the property transferred or conveyed to the purchaser and all other matters were finally settled between the parties. The payment of late completion interest would be a matter which had to be finally settled between the parties as part of the process of completion.

The plaintiff could have tendered the amount of interest claimed without prejudice to his right to recover the same. If he had done that and the defendants had refused to complete, the defendants would have been responsible for the delay.

Accordingly, I find that the delay in completion on 29 April 1987 and on 21 August 1987 was attributable solely to the default of the plaintiff. He must therefore pay to the defendants interest at 10% on the balance of the purchase price from 29 April 1987 to the date of actual completion. The plaintiff therefore fails in his claim for late completion interest.

Order accordingly.

Solicitors: *C.H. Eng & Frois; Bee See & Tay.*

TURNER (EAST ASIA) PTE. LTD. v. BUILDERS FEDERAL (HONG KONG) LTD. & ANOR.

[O.C.J. (Chan Sek Keong J.C.) 30 March 1988]

[Singapore – Originating Motion No. 90 of 1987]

Legal Profession – American law firm – Intending to act as advocates and solicitors in arbitration proceedings in Singapore – Whether permissible – Legal Profession Act (Cap. 161, 1985 Ed.), ss. 29 & 30.

The applicants were the main contractors for a building project. The respondents were the sub-contractors for the construction of certain curtain walls. For certain reasons, the applicants stopped all works. Subsequent to the stoppage, the respondents made certain claims from the applicants. The disputes were referred to arbitration.

D & P (an American law firm) purported to represent the respondents. The applicants applied for and obtained an interim injunction restraining D & P from acting for the respondents. The applicants in the instant case sought to make the injunction permanent.

The applicants contended that D & P by so acting for the respondents have contravened, and by intending to so act in the arbitration proceedings will contravene, either section 29(1) or section 30(1) of the Legal Profession Act ("the Act").

The respondents argued that the Act has no application to arbitration proceedings and that foreign lawyers and non-lawyers are not prohibited by the Act from representing parties to arbitration proceedings in Singapore.

Held, allowing the application: (1) it is neither necessary nor desirable to attempt to identify the acts and services which have the quality or character of being "legal" acts or services or which may only be provided by advocates and solicitors. The character of a legal service is not determined solely by the requirement of knowledge of the law, for non-advocates and solicitors may have a knowledge of the law and many of them have a better knowledge. The categories of legal services are not closed nor do they remain static for all time. They change from time to time to meet the needs of society;

(2) two tests may be constructed from the authorities and the provisions of sections 29 and 30 of the Act:

(a) other than those specific acts listed in section 30(1) and (2), an act is an act of an advocate and solicitor when it is customarily (whether by history or tradition) within his exclusive function;

(b) a person acts as an advocate and/or solicitor if, by reason of his being an advocate and solicitor, he is employed to act as such in any matter connected with his profession;

(3) applying these two tests, firstly, the services of D & P intended to be provided to the respondents are services customarily provided by advocates and solicitors of the Supreme Court and indeed may be said to constitute the core services of the legal profession. Secondly, D & P's employment in the arbitration proceedings is in connection

with their profession as attorneys and because they are attorneys;

(4) the participation of D & P in the arbitration proceedings in Singapore is part and parcel of the practice of their profession as attorneys in New York, save only that it is being practised in Singapore in regard to the arbitration;

(5) section 30(1) is not restricted to proceedings in a court of law;

(6) the primary object of the Act is to protect the public from claims to legal services by unauthorized persons. Parties who prefer to have their disputes resolved through arbitration rather than by court proceedings are no less members of the public. Their common law right to retain whomsoever (from the category of unauthorized persons) they desire or prefer for their legal services in arbitration proceedings in Singapore has been taken away by the Act. Such freedom of choice is now limited to a choice from amongst authorized persons where the dispute in question involves questions of law and legal rights and obligations. This does not mean that only advocates and solicitors of the Supreme Court may appear in arbitration proceedings. But it means that only those with practising certificates may practise law in arbitration proceedings;

(7) D & P's representation of the respondents at the arbitration proceedings in Singapore will contravene section 29(1) and/or section 30(1) of the Act;

(8) the interim injunction granted by the court was made permanent.

Cases referred to:

(1) *Re Sanderson* [1927] V.L.R. 394 (apprvd).
(2) *R.* v. *Reid* [1931] S.S.L.R. 62 (apprvd).
(3) *R. (Smith)* v. *Mitchell* [1932] O.W.N. 508 (apprvd).
(4) *R.* v. *Campbell & Anor.* (1974) 45 D.L.R. (3d) 522 (apprvd).
(5) *In the Matter of Baker, Lees & Co.* [1903] 1 K.B. 189 (refd).
(6) *Allen* v. *Aldridge* 5 Beav. 401; 49 E.R. 633 (refd).
(7) *The Apothecaries Co.* v. *Jones* [1893] 1 Q.B. 89 (cited).

ORIGINATING MOTION.

Wong Meng Meng (*S. Menon* with him) for the applicants.

M. Karthigesu (*A. Thambaiyah* with him) for the respondents.

Warren Khoo for the Law Society.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application by the applicants for the continuation of an interim injunction granted by this court on 18 August 1987 restraining Messrs. Debevoise and Plimpton, a firm of New York attorneys (herein called "D&P"), or any partner or associate thereof from acting or appearing on behalf of the respondents in an arbitration in Singapore between the applicants and the respondents.

The following facts are not in dispute. The applicants, a company incorporated in Singapore, were the main contractors for the building project known as "The Gateway Project" which was a development along Beach Road of two multi-storey office blocks which were designed and laid out in such a manner as to give an architectural impression of a gateway into the island of Singapore. For reasons which do not concern us, the applicants stopped work in December 1984 as a result of which the disputes arising therefrom between the applicants and the employers have been referred to arbitration under the main contract.

The respondents were the sub-contractors for the construction of the curtain walls for the Gateway Project. Following the stoppage of work by the applicants, the respondents made claims against the applicants under the sub-contract. After a series of skirmishes between the parties in the High Court the disputes were referred to arbitration and one Douglas Smith, a Fellow of the Royal Institute of Chartered Surveyors and a Fellow of the Chartered Institute of Arbitrators, both of England, was on 9 April 1987 appointed by the court as the sole arbitrator.

On 25 June 1987, the solicitors for the applicants received from D&P by facsimile transmission a letter also dated 25 June 1987 from D&P in New York to the arbitrator in London stating, *inter alia*, that they represented the respondents in the arbitration between the applicants and the respondents. On 1 July 1987, D&P informed the arbitrator that they were ready to attend a preliminary meeting at an early date and suggested London as the most satisfactory venue. In this letter, D&P stated that they were "acting as counsel for [both respondents]". On 7 July 1987, D&P submitted under a covering letter the respondents' statement of claim. The covering letter was signed by two partners who described themselves as "counsel for claimants". The cover page and the final page of the statement of claim each bears the description of D&P as "attorneys for claimants". The arbitrator subsequently fixed the preliminary meeting to be held in Singapore, as the proper venue, on 20 August 1987. On 6 August 1987, D&P wrote to the arbitrator stating its intention to attend the preliminary meeting in Singapore as fixed by the arbitrator.

On 18 August 1987, the solicitors for the applicants commenced these proceedings and on the same day obtained *ex parte* an interim injunction restraining D&P from acting or appearing in

the said arbitration on the ground that such representation or appearance at the arbitration in Singapore would contravene the Legal Profession Act. As a result of the injunction, D&P did not attend the preliminary meeting held in Singapore on 20 August 1987. It is, however, not disputed that they continue to represent the respondents as attorneys up to the present day in relation to the dispute between the applicants and the respondents in their capacity as attorneys.

The other matters which are common ground between the applicants and the respondents are as follows:

(1) D&P are American attorneys having an office in New York and have not been admitted as advocates and solicitors of the Supreme Court of Singapore.

(2) D&P are employed by the respondents as attorneys and counsel for the said arbitration.

(3) The arbitration clause (clause 22) in the sub-contract provides specifically that the arbitration be in accordance with the Arbitration Act of Singapore; the procedure of the arbitration is also governed by the law of Singapore and the arbitration is subject to the supervision of the courts of Singapore as provided by the Arbitration Act.

(4) The sub-contract is also governed by the law of Singapore.

(5) The arbitration proceedings are now taking place in Singapore.

The case for the applicants is that D&P, by so acting for the respondents, have contravened, and by intending to so act in the arbitration proceedings will contravene, either section 29(1) or section 30(1) of the Legal Profession Act ("the Act").

Counsel for the Law Society, who appeared by the leave of the court, supports the case for the applicants.

The case for the respondents is that the Act has no application to arbitration proceedings and that foreign lawyers and non-lawyers are not prohibited by the Act from representing parties to arbitration proceedings in Singapore.

In so far as D&P are concerned, it is not disputed that they would be providing one or more of the following services to the respondents in the arbitration proceedings, *i.e.* (i) advising the respondents on their rights and liabilities under the sub-contract; (ii) the drafting of such documents as may be required for the arbitration; (iii) leading evidence on behalf of respondents and cross-examining the applicants' witnesses; and (iv) making submissions on the law and on the facts before the arbitrator. It is also common ground that the purpose of this application is to obtain from this court a ruling to determine D&P's status and also because the issue is one of public interest in the light of the government's intention to promote Singapore as an international arbitration centre. For these reasons, the respondents have agreed to waive the requirement that the applicants prove that their private rights have been or will be infringed by the intended acts of D&P.

I now turn to sections 29 and 30 of the Act, the relevant parts of which read as follows:

"29.(1) Subject to this Part, no person shall *practise as an advocate and solicitor or do any act as an advocate or a solicitor* unless his name is on the roll and he has in force a practising certificate and a person who is not so qualified is referred to in this Act as an unauthorized person."

"30.(1) Any unauthorized person who:

(a) *acts as an advocate or a solicitor or agent for any party to proceedings* or as such advocate, solicitor or agent sues out any writ, summons or process, or commences, carries on, solicits or defends any action, suit or other proceeding in the name of any other person or in his own name in any of the courts in Singapore or draws or prepares any document or instrument relating to any proceeding in the courts in Singapore; or

(b) ...

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months or to both.

(2) Without prejudice to the generality of subsection (1) any unauthorized person who either directly or indirectly:

(a) draws or prepares any document or instrument relating to any movable or immovable property or to any legal proceeding;

(b) takes instructions for or draws or prepares any papers on which to found or oppose a grant of probate or letters of administration;

(c) draws or prepares any document or instrument relating to the incorporation or formation of a limited company;

(d) on behalf of a claimant or person alleging himself to have a claim to a legal right writes, publishes or sends

a letter or notice threatening legal proceedings other than a letter or notice that the matter will be handed to a solicitor for legal proceedings; or

(e) solicits the right to negotiate, or negotiates in any way for the settlement of, or settles, any claim arising out of personal injury or death founded upon a legal right or otherwise,

shall unless he proves that the act was not done for or in expectation of any fee, gain or reward be guilty of an offence under this subsection."

(emphasis added)

As section 31 is relevant in construing the meaning of section 30, it is reproduced in full below:

"31. Section 30 does not extend to:

(a) the Attorney-General or the Solicitor-General or any other person acting under the authority of either of them;

(b) the Public Trustee, the Official Assignee, Assistant Public Trustees and Assistant Official Assignees acting in the course of their duties under any law relating to those offices;

(c) the Director of Legal Aid and Assistant Directors of Legal Aid acting in the course of their duties under the provisions of the Legal Aid and Advice Act;

(d) any other public officer drawing or preparing instruments in the course of his duty;

(e) any person acting personally for himself only in any matter or proceeding to which he is a party;

(f) any *bona fide* and full-time employee of an insurance company negotiating for the settlement of or settling a claim made or contemplated against any person or body corporate in cases where, the claim, arising out of personal injury or death, relates to a risk insured by that insurance company;

(g) any arbitrator or umpire lawfully acting under any written law relating to arbitration, settling or attempting to settle the dispute between the parties to the arbitration;

(h) any full-time member of the academic staff of the Faculty of Law of the National University of Singapore who is a qualified person rendering any opinion or acting in an advisory capacity on any matter in which he has been instructed;

(i) any accountant drawing or preparing documents in the exercise of his profession;

(j) any proceeding before the Industrial Arbitration Court or the Syariah Court;

(k) any person merely employed to engross any instrument or proceeding;

(l) any approved company auditor drawing or preparing any instrument which he is empowered to do under any law for the time being in force relating to companies; or

(m) any agent duly authorized to the satisfaction of the Registrar of Trade Marks drawing or preparing documents in any matter relating to trade marks."

Section 29(1) provides the foundation for the case for the applicants and for the Law Society. The submission is that D&P's role at the arbitration proceedings would amount to either (a) practising as advocates and solicitors or (b) doing an act or acts as advocates and solicitors. Alternatively, it was submitted that D&P's role would amount to acting as advocates or as solicitors to proceedings under section 30(1)(a) of the Act.

None of the relevant expressions in sections 29(1) and 30(1) of the Act, *i.e.* "practising as an advocate and solicitor", "do any act as an advocate and solicitor" and "act as an advocate or solicitor", has been defined. Nevertheless, what constitutes acting as an advocate or solicitor or doing an act as such may be inferred from section 30(2)(a) to (e) which set out five specific acts which may not be done by unauthorized persons for payment. It must therefore follow that the doing by any person of any of the acts specified in section 30(2) will constitute either doing an act as or acting as an advocate and solicitor. It should, however, be noted that this list does not exhaust all the acts or services of an advocate and solicitor as section 30(2) is expressed not to affect the generality of section 30(1).

Counsel for the applicants has referred me to some decisions from different jurisdictions on what is meant by acting as a solicitor or doing an act as such. In *Re Sanderson*[1] a debt collector who threatened to issue a summons against a debtor was held to have acted as a solicitor on the ground that this was an act usually done by a solicitor. In *R.* v. *Reid*[2] the Chief Justice of the Straits Settlements held to the same effect. This particular form of service is now specifically regulated under section 30(2)(d). Another example is *R (Smith)* v. *Mitchell*[3] where a notary public who acted in transactions for the sale and purchase of land, including the drafting and registration of the relevant deeds was held to have practised as a solicitor. He was also found guilty of representing himself to be a solicitor although he had not called himself a solicitor as he had raised questions of law, decided the sufficiency of answers thereto and expressed opinions that titles to real property were good in

law. Again this type of service is regulated under section 30(2)(a).

In *R.* v. *Campbell & Anor.*[4] the accused was an accountant. He incorporated a company, prepared a partnership agreement and declaration and was involved in land sales for his clients. The court found him guilty of "acting as a solicitor" under section 50(1) of the Law Society Act 1970 (Ontario) in that he had given advice on legal questions, framed documents intended to have a legal operation and assisted in matters affecting one's legal position. The court also found that he was guilty of "practising as a solicitor" inasmuch as he did these things frequently.

On the basis of these decisions, counsel for the applicants submitted that whether a person is acting as an advocate or solicitor or doing an act as such depends on the circumstances of each case. I agree. It is neither necessary nor desirable to attempt to identify the acts and services which have the quality or character of being "legal" acts or services or which may only be provided by advocates and solicitors. The character of a legal service is not determined solely by the requirement of knowledge of the law, for non-advocates and solicitors may have a knowledge of the law and many of them have a better knowledge. The categories of legal services are not closed nor do they remain static for all time. They change from time to time to meet the needs of society. New services are developed to meet the demands of political, economic and social changes in Singapore. Such changes also result in traditional legal services dying out as the need for them dies out. Some services are captured by other disciplines because their practitioners are better placed or equipped to provide them in Singapore. A good example is tax planning and advice which is predominantly provided by the accountancy profession.

Counsel for the applicants also submitted that another test for determining whether a person is acting as an advocate and/or solicitor is the capacity in which that person is being employed. He referred to the decision of *In the Matter of Baker & Co.*[5] where a parliamentary agent, who was also a solicitor, delivered a bill of costs for taxation in connection with work in promoting a bill in Parliament. The Court of Appeal held that the bill could not be referred for taxation under the Solicitors Act 1843 as the work was done by him as a parliamentary agent and not as a solicitor.

In the course of his judgment, Romer L.J. held that the true principle had been laid down by Lord Langdale M.R. in *Allen* v. *Aldridge*[6] where the Master of the Rolls had said:

> "The statute does not authorize the taxation of every pecuniary demand or bill which may be made or delivered by a person who is a solicitor, for every species of employment in which he may happen to be engaged. The business contained in a taxable bill may be business of which no part was transacted in any court of law or equity; but I am of opinion that it must be business connected with the profession of an attorney or solicitor – business in which the attorney or solicitor was employed, because he was an attorney or solicitor, or in which he would not have been employed, if he had not been an attorney or solicitor, or if the relation of attorney or solicitor and client had not subsisted between him and his employer."

In my view, two tests may be constructed from these authorities and the provisions of sections 29 and 30 of the Act:

(a) other than those specific acts listed in section 30(1) and (2), an act is an act of an advocate and solicitor when it is customarily (whether by history or tradition) within his exclusive function to provide, *e.g.* giving advice on legal rights and obligations, drafting contracts and pleadings and pleading in a court of law;

(b) a person acts as an advocate and/or solicitor if, by reason of his being an advocate and solicitor, he is employed to act as such in any matter connected with his profession.

In this case, it is only necessary to apply these two tests to D&P to determine whether they would be acting as or providing services or doing acts of advocates and solicitors. The answer is beyond any doubt. Firstly, the services D&P intend to provide to the respondents are services customarily provided by advocates and solicitors of the Supreme Court and, indeed, may be said to constitute the core services of the legal profession. Secondly, D&P's employment in the arbitration proceedings is in connection with their profession as attorneys and because they are attorneys. They are not being employed to act as experts in the science of building construction or the valuation of works done under the sub-contract or in some other non-legal capacity.

Counsel for the respondents has not sought to argue to the contrary because the contrary cannot be argued. He sought to avoid the consequences of such a conclusion by contending that arbitration proceedings are fundamentally different from pro-

ceedings in a court of law (in that the former is consensual whereas the latter is not and that the arbitrator is the master of the procedure in such proceedings) and that the Act has no application to arbitration proceedings. He contended that section 29 is merely a definition section as no penalty has been provided for any breach thereof. He also contended that the expression "practise" in section 29(1) implies regularity: see Hawkins J. in *The Apothecaries Co.* v. *Jones*[7] at pp. 93-94 where his Lordship said: "to 'practise' a calling does not mean to exercise it upon an isolated occasion, but to exercise it frequently, customarily or habitually" (approved and applied in *R.* v. *Campbell & Anor.*[4]) and that D&P by acting in the arbitration on this single occasion cannot be said to practise as advocates and solicitors.

In my view, section 29(1) has a larger purport than that contended for by counsel for the respondents. It is not a mere definition section as the first part of it is not expressed as such. Section 29(1) has two distinct parts. The first part contains clear words of prohibition: "*Subject to this Part, no person shall practise as an advocate and solicitor or do any act as an advocate or a solicitor unless* ..." The second part goes on to define an unauthorized person. This is followed by section 29(2) which permits pupils to appear in chambers in certain circumstances. It is true that section 29(1) does not provide any penal sanction for breach of the prohibition, but in my view, this does not detract from its legislative intent. The absence of a penal sanction can only be due to one of two causes, *i.e.* (1) it was omitted inadvertently or (2) it was omitted deliberately. The first cause is not unlikely as the scope of section 29(1) is different from and appear to be wider than that of section 30(1). Section 29(1) prohibits the practice as an advocate and solicitor and the doing of an act as an advocate and solicitor by an unauthorized person whereas section 30(1) prescribes specific acts by unauthorized persons. If the omission were due to inadvertence, it would, in my view, be remedied by the "catch-all" penalty provision that is section 225C of the Penal Code, which provides that:

"Whoever does anything which by any law in force in Singapore he is prohibited from doing, or omits to do anything which he is so enjoined to do, shall, when no special punishment is provided by the law for such commission or omission, be punished with fine not exceeding $200."

On the other hand, if the penal sanction were deliberately omitted because section 29(1) was intended as a declaration of a general legislative intent, then such intent would have to be given effect to in some other provision and that can only be section 30. If this is the correct approach, then section 30(1) must be construed with this in mind. The result of adopting this approach will be considered later in connection with counsel's submission on section 30(1).

I also do not accept the argument that D&P would not be practising as advocates and solicitors because they are acting in only one arbitration. It is true that D&P are acting in only one dispute but it is a dispute of a substantial character which may take a long time to be resolved by arbitration and/or in further proceedings by way of appeal. The degree and duration of D&P's participation are relevant factors to be taken into account. If a major disaster were to occur in Singapore, say, one of the magnitude of the Bhopal disaster, and D&P were retained to act for the owners of the manufacturing plant for the purpose of settling, whether through arbitration or privately, the claims of injured persons and the process of settlement were to take a number of years, can it seriously be argued that they would not be practising law because they would be acting on an isolated occasion? In my view, they would be practising as advocates and solicitors for the duration of the case. D&P would not be doing an isolated act but a series of acts over a period of time in respect of an isolated matter. That type of service distinguishes itself from a case where D&P give legal advice and no more on an isolated occasion and, in my view, amounts to practising as advocates and solicitors in Singapore. There is no principle which says a person cannot practise as an advocate and solicitor in respect of only one case.

There is another ground for coming to this conclusion. It is that the profession of D&P is that of attorneys. What is an attorney in New York is an advocate and solicitor in Singapore. They both practise law in their respective jurisdictions under different systems of law. It is not disputed that D&P are attorneys who are qualified to and practise as such in New York. I do not think it can be disputed that when they agreed to act for the respondents in the arbitration, they did so in the exercise of their profession as attorneys. When the arbitrator decided that Singapore was the appropriate forum to hold the arbitration proceedings, it must follow that D&P, if they continue to act, will have to practise their profession in Singapore. The participation of D&P in the arbitration proceedings in Singapore is part and parcel of the

practice of their profession as attorneys in New York, save only that it is being practised in Singapore in regard to the arbitration. This conclusion is reinforced by section 20 of the Act which allows a Queen's Counsel to be admitted "to practise as an advocate and solicitor" even where he is admitted to act in one case only. The reason is that his appearance in that single case is part of the practice of his profession in England.

In regard to section 30(1)(a), counsel submitted that it is ambiguous and that it should be read in the following manner:

(i) the first part: "acts as an advocate or a solicitor or agent for any party to proceedings";

(ii) the second part: "or as such advocate or solicitor or agent sues out any writ summons ..."

Read in this manner, the expression, "proceedings" in the first part, would, it was contended, be confined to proceedings in a court of law as it is qualified by the sentence that immediately follows it, *i.e.* "or as such advocate or solicitor ...", the words "as such" ' being referrable to acting as an advocate or solicitor or agent for any party to proceedings.

Alternatively, counsel submitted that the word "proceedings" in the first part of paragraph (a) should be read to exclude arbitration proceedings for the following reasons:

(i) where the word "proceedings" is used in other parts of the Act to include arbitration proceedings, it is specifically provided for: see section 2 on the definition of "contentious business";

(ii) the omission of the inclusive word "any" before the word "proceedings" is not an oversight and therefore "proceedings" does not mean "any proceedings" but proceedings within the context of section 30(1) itself, *i.e.* proceedings in a court of law.

Counsel also called in aid two canons of construction: (1) a provision which contains a penal sanction should be interpreted restrictively; (2) any derogation by statute from common law rights (in this instance, the right of a person to appoint an agent to act on his behalf) is to be resolved in favour of maintaining common law rights unless they are clearly taken away: this principle applies to section 30(1)(a) to resolve the ambiguity in favour of the respondents.

Counsel's final submission is that the Act is intended to protect the public but not persons who voluntarily agree to have their disputes resolved through arbitration rather than by a court of law and that if the law allows them to settle their differences in this manner, they must be free to choose who will represent them without any restriction being placed on their choice.

I do not agree with these submissions. In my view, section 30(1) is not restricted to proceedings in a court of law for the following reasons. Firstly, as I have earlier observed, if section 29(1) is merely declaratory of the legislative intent, then section 30(1) should be construed to give effect to such legislative intent. So construed, section 30(1) may be read as follows:

(1) "acts as

(i) an advocate or a solicitor, or

(ii) agent for any party to proceedings, or

(iii) as such advocate, solicitor or agent sues out"

or

(2) the expression "proceedings" therein means any proceedings and not merely proceedings in a court of law.

Secondly, to construe section 30(1) in the manner contended by counsel for the respondents would mean that any unauthorized person in Singapore is free to practise law if such practice is confined to giving legal advice to his clients. On the construction contended for by counsel for the respondents, such service is not prohibited by section 29 or section 30 of the Act. In my view, the legislature could not have missed such a large hole in the Act. There are a number of indications in the Act which do not support counsel's construction: (a) section 31(h) expressly exempts a law teacher from section 30 when he renders any opinion on the law or act in an advisory capacity on any matter in which he has been instructed; by implication, this service (which is the giving of legal advice) is prohibited by section 30; (b) section 31(j) exempts from section 30 any proceedings before the Industrial Arbitration Court or the Syariah Court: by application of the *expressio unius* rule, proceedings before all other tribunals, including arbitral proceedings are not exempted.

The primary object of the Act is to protect the public from claims to legal services by unauthorized persons. Parties who prefer to have their disputes resolved through arbitration rather than by court proceedings are no less members of the public. Their common law right to retain whomsoever (from the category of unauthorized persons) they desire or prefer for their legal services in arbitration proceedings in Singapore has, in my view, been taken away by the Act. Such freedom of choice is now limited to a choice from amongst authorized persons where the dispute in question involves questions of law and legal rights and obligations. This does not mean that only advocates and solicitors of the Supreme Court may appear in arbitration proceedings. But it means that only those with practising certificates may practise law in arbitration proceedings.

For the above reasons, I am of the view that D&P's representation of the respondents at the arbitration proceedings in Singapore will contravene section 29(1) and/or section 30(1) of the Act. Accordingly, the applicants succeed in this application and I order that the interim injunction granted by this court on 18 August 1987 be made permanent. The respondents will pay costs of the applicants in this proceeding.

Order accordingly.

Solicitors: *Shook Lin & Bok; Cooma Lau & Loh & M. Karthigesu.*

REEBOK INTERNATIONAL LTD. v. NG WHYE THO t/a REEBOK SPORTS

[O.C.J. (Chan Sek Keong J.C.) 30 March 1988]

[Singapore – Motion in Suit No. 2312 of 1987]

Civil Procedure – Contempt of court – Order of court not complied with – Undertaking given to comply with order of court – Whether order of court still in force – Whether subject matter of contempt proceedings should be order of court or undertaking.

In this case, the applicants made an application to commit the respondent to prison for contempt of court for not obeying an order of court. The respondent had, however, after the failure to obey the order of court, given an undertaking to comply with the order of court. The respondent raised a preliminary objection to the present application. The respondent contended that it was defective on the ground that the order of court has been superseded by the undertaking. The contention of the respondent was that the order of court was no longer operative in view of the undertaking and that committal proceedings can only be brought for breach of the undertaking.

Held, dismissing the preliminary objection: the undertaking given by the respondent was not given in lieu of the order of court but in lieu of the applicants agreeing to withdraw their application for committal. The learned judge, in not committing the respondent and accepting his undertaking, was merely giving him another opportunity to abide by the order of court. The order of court remained in force and nothing that had happened up to then had diminished or affected its operation.

Case referred to;

(1) *Hussain* v. *Hussain* [1986] 1 All E.R. 961 (expld).

MOTION.

Tan Woon Tiang for the plaintiffs/applicants.

N.S. Kang for the defendant/respondent.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application by the applicants to commit the respondent to prison for contempt of court on the following grounds:

(1) On 28 August 1987, the applicants obtained an order of court ("the order of court") which, *inter alia,* directed the respondent, within seven days of the service of the said order on him, to file and serve on the applicants' solicitors an affidavit setting forth, so far as was known to the respondent, the names and addresses of all persons, firms or companies:

(a) to whom the respondent had supplied;

(b) from whom the respondent had obtained supplies; and

(c) who have ordered from the respondent

any of the "Reebok" shoes referred to in paragraph 1 of the order of court and do disclose in such affidavit the dates of each such supply by or to the respondent, and the quantities and consideration therefor, and do exhibit to the said affidavit copies of all relevant documents including invoices, bills, receipts, shipping documents, orders, contracts, letters of credit and copies thereof relating thereto and which are in the respondent's possession, custody or control.

(2) The order of court was served on the respondent by leaving a copy thereof at the office of the respondent on 28 August 1987 and by serving the same on the respondent's solicitors at their request on 2 September 1987.